# DIGEST OF IMPORTANT DECISIONS.

EDITED BY

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## CARRIERS AND TRANSPORTATION COMPANIES.

*Cases selected by* OWEN WISTER.

INTERSTATE COMMERCE LAW.

1. *Carriers—Discrimination.*

The action of a railroad passenger agent in guaranteeing that a theatre troupe, to whom he sells a party-rate ticket, shall arrive at their destination at a given time, is not the giving of an undue or unreasonable preference or advantage, within the meaning of the interstate commerce law (24 Stat., 380, § 3): Foster *v.* Cleveland, C. C. & St. L. Rwy. Co., Circuit Court, Southern District of New York, WHEELER, D. J., June 15, 1893, 56 Fed. Rep., 434.

PASSENGER'S BAGGAGE.

2. *Action by Husband for.*

Where husband and wife are traveling together over a railway whose business it is to carry passengers and their baggage, and the husband purchases the tickets representing the fares of himself and wife, and has his own and his wife's baggage checked to the point of their destination, himself receiving the checks representing the railway's receipts for such baggage, and the railway company loses or fails to deliver at the agreed point the trunk thus checked of the wife, containing her wearing apparel and that of her child, *held* that, under these circumstances the husband can, in his own name alone, without joining his wife, maintain an action for damages upon the contract thus made with him for the carriage of himself and wife and their baggage, for the breach thereof by the railway in failing to deliver the baggage of the wife; that in such case, although the general ownership of the lost trunk and its contents is in the wife, the husband has such a special ownership therein as will entitle him to recover, in his own name alone, the value of such lost trunk and its contents as damages for the breach of the contract made with him for its safe carriage and delivery. *Held*, further, that a recovery by the husband in such case is a complete bar to any subsequent suit upon the same cause of action that might be instituted by the wife: Jacksonville, S. A. & H. R. Rwy. Co. *v.* Mitchell Supreme Court of Florida, TAYLOR, J., August 15, 1893, 13 So. Rep., 673.

SLEEPING CAR CO.

3. *Liability for Money Stolen From Passenger—Who May Bring Action.*

A sleeping-car company is liable for money stolen from a passenger by the porter of the car on which he is traveling.

Plaintiff, when about to go on a journey with his family and some

friends, was given some money by the parents of a lady who had been put in his care, with which to pay her traveling expenses. This he placed in his trousers pocket, and it was stolen by the porter of the sleeping-car during the night. *Held*, that the money being rightfully in plaintiff's possession, he was entitled to bring an action for its loss: Pullman Trans. Co. *v.* Gavin, Supreme Court of Tennessee, MCALLISTER, J., June 21, 1893, 23 S. W. Rep., 70.

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## CONSTITUTIONAL LAW.

*Cases selected by* WILLIAM STRUTHERS ELLIS.

DUE PROCESS OF LAW.

1. *Fencing.*

Complainant owned a tract of land which was valuable solely for grazing purposes, and from which he derived an income by letting it to pasture. At the time he acquired it the law of South Carolina required all owners of cattle and stock to keep them fenced in, and gave the owners of lands upon which they might trespass the right to distrain and impound them. Thereafter the legislature passed an act exempting this land, with other tracts, from the provisions of the law, the effect of which was to require complainant either to fence his whole tract against cattle, or to submit to have it trespassed upon, without redress, by any cattle whose owners chose to let them run at large. *Held*, that this act is not within the police power of the State, and violates the Federal Constitution, inasmuch as it deprives complainant of his property without due process of law: Smith *v.* Bivens, Circuit Court, District of South Carolina, SIMONTON, D. J., May 19, 1883, 56 Fed. Rep., 352.

INTERSTATE COMMERCE.

2. *Sale of Oleomargarine—Original Package—Agent for Foreign Manufacturer.*

The Pennsylvania Act of May 21, 1885, § 3, which prohibits the sale within the State of oleomargarine as an article of food, applies to retail sales made by a local agent, who is a resident of said State, for a principal residing without the State. Such sales are not made from the factory, nor under the right which the fact of making confers on the maker; so that the fact that the store from which the sales are made is the store of the manufacturer and that the seller is the agent, cannot relieve him from liability. The situation of the seller, although he is a non-resident, who has come into the State to embark in business here, is like that of any other resident, and his business done at his store is State, not interstate, no matter where the goods may have been obtained.

The mere fact that packages sold within the State of Pennsylvania were "made, stamped and branded" by defendant's principal, a manufacturer residing in a foreign State, is not sufficient to bring the sale within the exception made and recognized in the case of "*original* packages" and within the protection of the interstate commerce doctrine.

The importer cannot subdivide his packages and dispose of the several parts in detail, nor can it be permitted a manufacturer to put up and send to himself as a merchant, or to a customer, any package and call it an "*original* package" because it was put up by a manufacturer outside the State; Leisy *v.* Hardin, 135 U. S., 100, distinguished: Commonwealth *v.* Schollenberger, Supreme Court of Pennsylvania, WILLIAMS, J., July 19, 1893, 27 Atl. Rep., 30; 32 W. N. C., 409; 156 Pa., 201.

OBLIGATION OF CONTRACT.

3. *City Ordinances—Street Railway Franchise.*

An Act of Indiana (Laws 1891, pp. 137-97) conferred upon the city of Indianapolis the power, by contract, when approved by ordinance of its common council, to grant franchises to street-car companies. *Held*, that an exercise of this power by the board of public works, with approval by ordinance of the common council, was a law of the State within the meaning of Constitution U. S., Art. I, § 10, forbidding States to pass any law impairing the obligation of contracts, and that such city ordinance after acceptance by the corporation, and the expenditure of large sums on the faith thereof, constitutes a contract protected by said clause of the Federal Constitution: Citizens' St. R. Co. *v.* City Ry. Co., Circuit Court, District of Indiana, BAKER, D. J., July 11, 1893, 56 Fed. Rep., 746.

TITLES OF ACTS.

4. *Appropriation—Public Schools Not Part of Municipal Organization.*

The Act of Alabama (February 7, 1893), entitled "An Act to Amend 'an Act to Establish a New Charter for the City of Demopolis,'" provides, *inter alia*, that all funds arising under the general laws for liquor licenses issued to dealers within the city shall be paid over by the probate judge of the county to the city treasurer, for the support of the public schools of the city. *Held*, that the subject of said section was not clearly expressed in the title as required by the constitution, as the support of the public schools is not a matter germane to municipal organization: Wolf *v.* Taylor, Supreme Court of Alabama, HARALSON, J., July 27, 1893, 13 So. Rep., 688.

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## CORPORATIONS.

*Cases selected by* LEWIS LAWRENCE SMITH.

DISSOLUTION.

1. *Judgment of Ouster—Receiver.*

By Act of April 4, 1872, of Pennsylvania, when judgment of ouster against a corporation is pronounced by any court of competent jurisdiction, the Supreme Court or any judge thereof at *nisi prius* may appoint a receiver. The Order of Vesta made an assignment which was recorded under direction of the Court of Common Pleas, of Philadelphia. A judg-

ment of ouster against the Order was entered by the Common Pleas of Dauphin County, which also appointed a receiver. The Act of April 26, 1893, was then passed, providing that the court pronouncing judgment of ouster should have authority to appoint a receiver. The second section of this act provided that it should apply to any corporation previously dissolved, "the affairs of which have not been settled and adjusted." This act was admitted to have been passed for the purpose of affecting the case in question. It was *held*, that a receiver, not being a common law officer, must be provided for by statute, that the power was vested in the Supreme Court by the Act of 1872, and that the Act of 1893 did not apply to a case where another court had assumed jurisdiction of the matter: Commonwealth *ex rel.* Attorney General *v.* Order of Vesta, Kennedy's Appeal, Supreme Court of Pennsylvania, MITCHELL, J., July 19, 1893, 27 Atl. Rep., 14; 33 W. N. C., 1; 156 Pa., 531.

DIVIDENDS.

2. *Refusal to Declare.*

Three men formed a land company with capital of $1500. In less than a year it had made profits of $40,000. It appeared that two of the three corporators suppressed, for wrongful purposes, information concerning the business of the concern, withheld dividends and voted inordinate salaries to themselves. A bill was filed by the third corporator against the company and the other stockholders. *Held*, that while generally suits for declaration of dividends must be brought in the name of the corporation, yet under the circumstances this suit was proper. Also that the court would order the directors to declare such reasonable dividends as the business would warrant, with leave to complainant to come into court for relief from time to time: Laurel Springs Land Co. *v.* Fougeray, Court of Errors and Appeals of New Jersey, GARRISON, J., June 19, 1893, 26 Atl. Rep., 886.

FRAUDULENT CONVEYANCES.

3. *To Secure Debts of Officers.*

A mortgage by a corporation is fraudulent as to creditors where part of the amount secured thereby is a loan to one of its officers, and it is immaterial that the officer applied the money loaned to the payment of his indebtedness to the corporation, or that part of the amount secured was a *bona fide* indebtedness of the corporation: National Tube Works Co. *v.* Ring Refrigerating, etc., Co., Supreme Court of Missouri, Div. 1, MACFARLAND, J., June 19, 1893, 22 S. W. Rep., 947.

INSOLVENCY.

4. *When Receiver Will be Appointed.*

A Court of Equity has no authority to appoint a receiver for a beneficial association upon allegations of fraud and mismanagement of its officers, where there is no sufficient allegation of insolvency. And even were the latter allegations sufficient, it is questionable whether the court would have the authority: Mason, *et al.*, *v.* Supreme Court of Equitable League, Court of Appeals of Maryland, FOWLER, J., June 20, 1893, 27 Atl. Rep., 171.

# EQUITY.

*Cases selected by* ROBERT P. BRADFORD.

CONDEMNATION PROCEEDINGS.

1. *Adequate Remedy at Law.*

Where a bill in equity was filed to restrain the condemnation by defendant company of a right of crossing for its railroad through the yard of complainant company, upon motion for a preliminary injunction to prevent the condemnation commissioners appointed by the State court from considering a plan of crossing different from that described in the petition for their appointment, it was held that equity would not interfere with proceedings before a special statutory tribunal until it has made a final decision. Also, that an ample legal remedy by *certiorari* is open to the complainant: Pennsylvania Railroad Co. *v.* National Docks & N. J. J. C. Ry. Co., United States Circuit Court, District of New Jersey, ACHESON, C. J., March 28, 1893, 56 Fed. Rep., 697.

INJUNCTION.

2. *Restraining Action at Law.*

A railroad company sold an interest in certain cars to a car company, leasing the remaining interest therein to the car company, and made a contract with the car company for the operation of the cars by the latter, with a division of profits. The contract provided that the railroad company might terminate the lease and should then pay the car company for its interest in the cars. The railroad company terminated the lease without paying for the car company's interest. *Held*, that the railroad company could not enjoin the prosecution of an action of law for the value of the car company's interest in the cars, on the ground that the car company had not fairly divided the profits, the various branches of the contract being totally distinct, the bill to surcharge the accounts in no way attacking the claim involved in the suit at law; 49 Fed. Rep., 409, *reversed:* Pullman Palace-car Company *v.* Chicago, M. & St. P. Ry. Co., Circuit Court of Appeals, Seventh Circuit, JENKYNS, J., May 2, 1893, 56 Fed. Rep., 756.

3. *Trade Mark—Geographical Name—Vichy Mineral Water.*

A right may be acquired to use a geographical name as a trade name in connection with mineral waters derived from springs in that locality by persons who own all of such springs, and the use of such name by others who obtain their waters elsewhere will be enjoined.

The word "Vichy," used in connection with mineral waters, and derived from the locality in France where the waters are obtained, is a trade name, or "nom commercial," within the meaning of the industrial property treaty with France of 1883, Art. 6 (25 Stat., 1376), and as such is entitled to protection in the United States, though it has not been deposited as required by the treaty in the case of trade-marks: La Republique Francaise *v.* Schultz, Circuit Court, Southern District of New York, TOWNSEND, D. J., July 3, 1893, 57 Fed. Rep., 37.

## EVIDENCE.

*Cases selected by* HENRY N. SMALTZ.

ACTION ON LEASE.

1. *Contemporaneous Oral Agreement.*

In an action on a lease, parol evidence is not admissible to show that, at the time the lease was made, plaintiffs agreed to make, within a year, certain alterations in the demised premises, so as to make them conform to the stipulations of a prior oral agreement made contemporaneously with a written contract of lease, in pursuance of which written contract such lease was executed: Averill *v.* Lawyer, Supreme Court of Errors of Connecticut, FENN, J., CARPENTER, J., dissenting, March 6, 1893, 27 Atl. Rep., 73.

DISCREDITING ONE'S OWN WITNESS.

2. *When Allowed.*

A party who has called a witness in his own behalf, and who is surprised by his adverse testimony, may, in the discretion of the court, be allowed to show, after proper preliminary proof, that he had previously made statements contrary to his testimony: Leloner *v.* Bryant, Supreme Court of Minnesota, DICKINSON, J., GILFILLAN, C. J., dissenting, August 21, 1893, 36 N. W. Rep., 58.

PREVIOUS CONDITION OF INJURED PERSON.

3. *Photograph.*

On the trial of an action brought to recover for personal injuries said to have been caused by defendant's negligence, a photograph taken a few days prior to the trial, and testified to be "a true and correct picture and representation of" certain parts of plaintiff's body, was received in evidence, under objection and exception. The photograph was not made a part of the record on appeal. *Held*, that no error was made to appear: Cooper *v.* St. Paul City Ry. Co., Supreme Court of Minnesota, VANDERBURGH, J., August 1, 1893, 56 N. W. Rep., 42.

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## MUNICIPAL CORPORATIONS AND PUBLIC LAW.

*Cases selected by* MAYNE R. LONGSTRETH.

CHINESE EXCLUSION.

1. *Appeal from Commissioner's Decision.*

The right of appeal to a District Court, given by Act of September 15, 1888, § 15 (28 Stat., 476), to a Chinese person adjudged by a United States commissioner to be unlawfully in the United States, is not taken away by the Geary Act of May 5, 1892 (27 Stat., 25): United States *v.* Wong Depken, District Court, Southern District of California, ROSS, D. J., June 30, 1893, 57 Fed. Rep., 203.

2. *Geary Act—Imprisonment at Hard Labor—Constitutional Law.*

Imprisonment at hard labor is a punishment rendering a crime for which it is inflicted "infamous" within the meaning of the Constitution of the United States, Art. 3, § 2, par. 3, and Amendments 5 and 6, providing that no person shall be held to answer for a capital or otherwise infamous crime, unless on indictment or presentment of a grand jury. Therefore so much of the Geary Act of May 5, 1893, § 4 (27 Stat., 25), as provides for the imprisonment at hard labor of all Chinese persons adjudged by a commissioner to be unlawfully in the United States, is unconstitutional and void: United States *v.* Wong Depken, District Court, Southern District of California, ROSS, D. J., July 31, 1893, 57 Fed. Rep., 206.

COPYRIGHT.

3. (*a*) *Filing Copy of Title of Work—Variance.*

The copy of the title of a play, filed to obtain copyright under the Act of February 3, 1832, was "Under the Gaslight, a Romantic Panorama of the Streets and Houses of New York." The title of the play published was, "Under the Gaslight, a Totally Original and Picturesque Drama of Life and Love in These Times, in Five Acts." *Held*, that there was no material variance. The title of the play, within the meaning of the act —being the name to be given to it by the public, and by those who might buy and sell it—was "Under the Gaslight," the remaining words being mere description of the general character of the work, apparently not intended, and not in fact used, as any part of the title.

(*b*) *Dramatic Composition.*

A scene in a play represented a person put in peril of his life by being placed by another on a track over which a railroad train was momentarily expected to arrive, and so fastened that he could not move from his dangerous position, and his rescue by a third person who, surmounting various obstacles, succeeded, at the last moment, in releasing him. It was displayed before the audience by a series of incidents grouped in a certain sequence, and realistically presented, but with very little dialogue. *Held*, that such combination of dramatic events, although its success was largely dependent on what was seen, irrespective of the dialogue, was a dramatic composition, entitled to protection under the copyright laws: Daly *v.* Webster, Circuit Court of Appeals, Second District, PER CURIAM, October 4, 1892, 56 Fed. Rep., 483.

4. *Subject of Copyright—Infringement—Photograph—Lithograph.*

A photographer, who, by posing, and by the arrangement of lights, shades and various accessories, produces an artistic photograph of an actress, representing his ideal of a character which she is accustomed to impersonate on the stage, is entitled to the protection of the copyright law.

A lithograph, which, to the eye of the ordinary observer, reproduces the material parts of a copyrighted photograph, is an infringement,

although it is not an exact copy, and lacks the artistic excellence of the photograph: Falk *v.* Donaldson, Circuit Court, Southern District of New York, TOWNSEND, D. J., July 5, 1893, 57 Fed. Rep., 32.

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## TORTS.

*Cases selected by* ALEXANDER DURBIN LAUER.

ASSAULT AND BATTERY.

1. *Master and Servant—Liability for Employé's Act.*

The manager of a theatre is liable for an assault and battery on an inoffensive patron, made by one employed by him as doorkeeper and special police: Dickson *v.* Waldron, Supreme Court of Indiana, HOWARD, J., June 7, 1893, 34 N. E. Rep., 503.

2. *Privilege—Justification.*

A newspaper article calling a congressional candidate a "perjured villain," and charging that he had deceived a court of justice by false swearing, is libelous *per se*, and not privileged by the fact of plaintiff's candidacy.

The fact that a libelous article on a congressional candidate was copied by defendant from another newspaper is not a justification, even if defendant acted with the utmost good faith and honest belief in its truth, and in order to inform the voters. Such matters can only be considered in disproof of malice, to mitigate damages: Upton *v.* Hume' Supreme Court of Oregon, BEAN, J., July 17, 1893, 33 Pac. Rep., 810.

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## WILLS, EXECUTORS AND ADMINISTRATORS.

*Cases selected by* MAURICE G. BELKNAP.

EXECUTORS.

1. *Promises by—Consideration—Lien on Insurance Policy—Wife.*

The fact that plaintiff loaned decedent money with which to pay premiums on a policy of insurance on his life, which was payable to the latter's wife, gives plaintiff no lien on the policy, nor right of action against decedent's widow.

A debt owing by defendant's deceased husband to plaintiff, which is barred by limitation, is not such consideration as will support an agreement by her to pay the amount of the debt.

A promise by an executor to look among the papers of deceased for one belonging to plaintiff, and to surrender it to her, is not sufficient consideration for a contract: Sullivan *v.* Sullivan, Supreme Court of California, VANCLIFF, C., August 10, 1893, 33 Pac. Rep., 862.